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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
:  
DELPHI CORPORATION, et al., : Case No. 05-\_\_\_\_ (\_\_\_\_)  
:  
Debtors. : (Jointly Administered)  
:  
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MOTION FOR ORDER UNDER 11 U.S.C. §§ 105, 363(b), 546(b), 1107, AND 1108  
AUTORIZING PAYMENT OF CONTRACTORS  
AND SERVICE PROVIDERS IN SATISFACTION OF LIENS

("LIEN CLAIMANTS MOTION")

Delphi Corporation ("Delphi") and certain of its subsidiaries and affiliates (the "Affiliate Debtors"),<sup>1</sup> debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), hereby submit this motion (the "Motion") for an order under 11 U.S.C. §§ 105, 363(b), 546(b), 1107, and 1108 authorizing but not directing the Debtors to pay the Contractor Claims (as defined below) in the ordinary course of the Debtors' businesses and (b) authorizing and directing all applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts to pay the Contractor Claims. In support of this Motion, the Debtors submit the Affidavit Of Robert S. Miller, Jr. In Support Of Chapter 11 Petitions And First Day Orders, sworn to October 8, 2005. In further support of this Motion, the Debtors respectfully represent as follows:

#### Background

##### A. The Chapter 11 Filings

1. On October 8, 2005 (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession

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<sup>1</sup> In addition to Delphi, the following entities are debtors in these related cases: ASEC Manufacturing General Partnership, ASEC Sales General Partnership, Aspire, Inc., Delco Electronics Overseas Corporation, Delphi Automotive Systems (Holding), Inc., Delphi Automotive Systems Global (Holding), Inc., Delphi Automotive Systems Human Resources LLC, Delphi Automotive Systems International, Inc., Delphi Automotive Systems Korea, Inc., Delphi Automotive Systems LLC, Delphi Automotive Systems Overseas Corporation, Delphi Automotive Systems Risk Management Corp., Delphi Automotive Systems Services LLC, Delphi Automotive Systems Tennessee, Inc., Delphi Automotive Systems Thailand, Inc., Delphi China LLC, Delphi Connection Systems, Delphi Diesel Systems Corp., Delphi Electronics (Holding) LLC, Delphi Foreign Sales Corporation, Delphi Integrated Service Solutions, Inc., Delphi International Holdings Corp., Delphi International Services, Inc., Delphi Liquidation Holding Company, Delphi LLC, Delphi Mechatronic Systems, Inc., Delphi Medical Systems Colorado Corporation, Delphi Medical Systems Corporation, Delphi Medical Systems Texas Corporation, Delphi NY Holding Corporation, Delphi Services Holding Corporation, Delphi Technologies, Inc., DREAL, Inc., Environmental Catalysts, LLC, Exhaust Systems Corporation, Packard Hughes Interconnect Company, Specialty Electronics, Inc., and Specialty Electronics International Ltd.

pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have moved this Court for an order authorizing joint administration of these chapter 11 cases.

2. No trustee, examiner, or creditors' committee has been appointed in the Debtors' cases.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

4. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 546(b), and 1107(a) of the Bankruptcy Code.

B. Current Business Operations Of The Debtors

5. With more than 180,000 employees worldwide, global 2004 revenues of approximately \$28.6 billion and global assets as of August 31, 2005 of approximately \$17.1 billion,<sup>2</sup> Delphi ranks as the fifth largest public company business reorganization in terms of revenues, and the thirteenth largest public company business reorganization in terms of assets. Delphi's non-U.S. subsidiaries are not chapter 11 debtors, will continue their business operations without supervision from the Bankruptcy Court, and will not be subject to the chapter 11 requirements of the U.S. Bankruptcy Code.

6. Over the past century, the operations which are now owned by Delphi have become a leading global technology innovator with significant engineering resources and technical competencies in a variety of disciplines. Today, the Company is arguably the single largest global supplier of vehicle electronics, transportation components, integrated systems and modules, and other electronic technology. The Company's technologies and products are present

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<sup>2</sup> The aggregated financial data used in this Motion generally consists of consolidated information from Delphi and its worldwide subsidiaries and affiliates.

in more than 75 million vehicles on the road worldwide. The Company supplies products to nearly every major global automotive original equipment manufacturer with 2004 sales to its former parent, General Motors Corporation, equaling approximately \$15.4 billion and sales to each of Ford Motor Company, DaimlerChrysler Corporation, Renault/Nissan Motor Company, Ltd., and Volkswagen Group exceeding \$850 million.

7. As part of its growth strategy, Delphi has established an expansive global presence with a network of manufacturing sites, technical centers, sales offices, and joint ventures located in every major region of the world. In the U.S., the Debtors employ approximately 50,600 people. Those employees work in approximately 44 manufacturing sites and 13 technical centers across the country, and in Delphi's worldwide headquarters and customer center located in Troy, Michigan. Approximately 34,750 of these individuals are hourly employees, 96% of whom are represented by approximately 49 different international and local unions. Outside the United States, the Company's foreign entities employ more than 134,000 people, supporting 120 manufacturing sites and 20 technical centers across nearly 40 countries worldwide.

8. Delphi was incorporated in Delaware in 1998 as a wholly-owned subsidiary of GM. Prior to January 1, 1999, GM conducted the Company's business through various divisions and subsidiaries. Effective January 1, 1999, the assets and liabilities of these divisions and subsidiaries were transferred to Delphi and its subsidiaries and affiliates in accordance with the terms of a Master Separation Agreement between Delphi and GM. In connection with these transactions, Delphi accelerated its evolution from a North American-based, captive automotive supplier to a global supplier of components, integrated systems, and modules for a wide range of

customers and applications. Although GM is still the Company's single largest customer, today more than half of Delphi's revenue is generated from non-GM sources.

9. Due to the significant planning that goes into each vehicle model, Delphi's efforts to generate new business do not immediately affect its financial results, because supplier selection in the auto industry is generally finalized several years prior to the start of production of the vehicle. When awarding new business, which is the foundation for the Company's forward revenue base, customers are increasingly concerned with the financial stability of their supply base. The Debtors believe that they will maximize stakeholder value and the Company's future prospects if they stabilize their businesses and continue to diversify their customer base. The Debtors also believe that this must be accomplished in advance of the expiration of certain benefit guarantees between GM and certain of Delphi's unions representing most of its U.S. hourly employees which coincides with the expiration of the Company's U.S. collective bargaining agreements in the fall of 2007.

C. Events Leading To Chapter 11 Filing

10. In the first two years following Delphi's separation from GM, the Company generated more than \$2 billion in net income. Every year thereafter, however, with the exception of 2002, the Company has suffered losses. In calendar year 2004, the Company reported a net operating loss of \$482 million on \$28.6 billion in net sales. Reflective of a downturn in the marketplace, Delphi's financial condition has deteriorated further in the first six months of 2005. The Company experienced net operating losses of \$608 million for the first six months of calendar year 2005 on six-month net sales of \$13.9 billion, which is approximately \$1 billion less in sales than during the same time period in calendar year 2004.<sup>3</sup>

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<sup>3</sup> Reported net losses in calendar year 2004 were \$4.8 billion, reflecting a \$4.1 billion tax charge, primarily related to the recording of a valuation allowance on the U.S. deferred tax assets as of December 31, 2004.

11. The Debtors believe that three significant issues have largely contributed to the deterioration of the Company's financial performance: (a) increasingly unsustainable U.S. legacy liabilities and operational restrictions driven by collectively bargained agreements, including restrictions preventing the Debtors from exiting non-strategic, non-profitable operations, all of which have the effect of creating largely fixed labor costs, (b) a competitive U.S. vehicle production environment for domestic OEMs resulting in the reduced number of motor vehicles that GM produces annually in the United States and related pricing pressures, and (c) increasing commodity prices.

12. In light of these factors, the Company determined that it would be imprudent and irresponsible to defer addressing and resolving its U.S. legacy liabilities, product portfolio, operational issues and forward looking revenue requirements. Having concluded that pre-filing discussions with its Unions and GM were not leading to the implementation of a plan sufficient to address the Debtors' issues on a timely basis, the Company determined to commence these chapter 11 cases for its U.S. businesses to complete the Debtors' transformation plan and preserve value.

13. Through the reorganization process, the Debtors intend to achieve competitiveness for Delphi's core U.S. operations by modifying or eliminating non-competitive legacy liabilities and burdensome restrictions under current labor agreements and realigning Delphi's global product portfolio and manufacturing footprint to preserve the Company's core businesses. This will require negotiation with key stakeholders over their respective contributions to the restructuring plan or, absent consensual participation, the utilization of the chapter 11 process to achieve the necessary cost savings and operational effectiveness envisioned in the Company's transformation plan. The Debtors believe that a substantial segment of

Delphi's U.S. business operations must be divested, consolidated, or wound-down through the chapter 11 process.

14. Upon the conclusion of this process, the Debtors expect to emerge from chapter 11 as a stronger, more financially sound business with viable U.S. operations that are well-positioned to advance global enterprise objectives. In the meantime, Delphi will marshal all of its resources to continue to deliver value and high-quality products to its customers globally. Additionally, the Company will preserve and continue the strategic growth of its non-U.S. operations and maintain its prominence as the world's premier auto supplier.

Relief Requested

15. By this Motion, the Debtors seek entry of an order pursuant to sections 105, 363(b), 546(b), 1107, and 1108 of the Bankruptcy Code (a) authorizing but not directing the Debtors to pay the Contractor Claims (as defined below) in the ordinary course of the Debtors' businesses and (b) authorizing and directing all applicable banks and other financial institutions to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts or electronic transfers authorized by the Debtors to pay the Contractor Claims; provided, however, that honoring, performing, or exercising such rights and obligations will not give rise to administrative claims solely as a result of the entry of an order providing such authorization and will not be deemed an assumption of any contract.

Basis For Relief

16. In connection with the fabrication of equipment and with repair, maintenance, and construction activities conducted at the Debtors' premises, the Debtors employ third-party tool builders, project managers, contractors, and maintenance companies (collectively, the "Contractors") which have agreed, pursuant to contract or otherwise (collectively, the "Agreements"), to render such services.

17. Generally speaking, the Debtors have developed strong, long-standing relationships with their Contractors, which have allowed the Debtors to negotiate very favorable pricing and trade credit terms. The Debtors fear that their failure to honor prepetition obligations to the Contractors would jeopardize these relationships. Because the universe of qualified Contractors is very limited, the Debtors believe that it would be extremely difficult to replace the majority of these providers with new providers on economically viable terms.

18. Moreover, although the Debtors generally have made timely payments to the Contractors, as of the Petition Date some of the Contractors might not have been paid for certain prepetition goods and services provided. As a result, certain Contractors might refuse to perform their ongoing obligations under the Agreements. Absent the Contractors' services, the physical condition of certain of the Debtors' properties and assets would deteriorate. The Contractors' failure to provide ongoing services would adversely affect the Debtors' sales and hamper their reorganization efforts. Additionally, as discussed below, many of the Contractors currently are in possession of equipment that is vital to the Debtors' operations, and such Contractors might assert possessory liens, refusing to redeliver such equipment to the Debtors until they are paid prepetition amounts.

19. The Debtors' failure to pay the Contractors for prepetition goods and services likely would result in many of the Contractors having a right to assert liens under applicable state mechanics', repairmans', materialmans', tool builders', and shipping lien statutes (collectively, the "Liens") against the relevant property or assets of the Debtors, which Liens may be perfected notwithstanding the automatic stay established by section 362 of the

Bankruptcy Code.<sup>4</sup> Indeed, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay otherwise established by section 362(a). Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

20. Finally, the existence and perfection of Liens not only would disrupt the Debtors' reorganization efforts but also could cause the Debtors to be in default under certain of their real estate leases.

21. Therefore, to avoid undue delay and to facilitate the continued operations of the Debtors' businesses and the maintenance of their properties, the Debtors seek immediate authority to pay and discharge, on a case-by-case basis and in their sole discretion, the claims of all Contractors that have given or could give rise to Liens against the Debtors' assets, properties, and/or offices, regardless of whether such Contractors already have perfected their interests (the "Contractor Claims"); provided, however, that with respect to each Contractor Claim, (a) the Debtors would not be authorized to pay a Contractor Claim unless the Contractor has perfected or, in the Debtors' judgment, is capable of perfecting or may be capable of perfecting in the future one or more Liens in respect of such Contractor Claim,<sup>5</sup> (b) such payment would not be

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<sup>4</sup> Of particular concern to the Debtors are the liens, pursuant to certain state statutes, that allow tool builders to establish possession and ownership rights in special tools that the Debtors require for metals fabrication. See, e.g., Mich. Comp. Laws Ann., § 570.543 (West Supp. 2005).

<sup>5</sup> Contemporaneously herewith the Debtors have filed a Motion For Order Under 11 U.S.C. § 503(b) Confirming Grant Of Administrative Expense Status To Obligations Arising From Postpetition Delivery Of Goods And Authorizing The Debtors To Pay Such Obligations In The Ordinary Course Of Business (the "Postpetition Delivery of Goods Motion"). In the event that certain of the Contractors have not perfected or, in the Debtors' judgment, are not capable or might not be capable of perfecting in the future one or more

deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of the related Liens, and (c) the Contractor agreed to release promptly any Liens upon payment of such Contractor Claim; provided, however, that should the Contractor fail to release promptly such Liens upon payment by the Debtors, any such Liens would be deemed released and expunged, without necessity of further action. Although it is difficult for the Debtors to estimate the amount of prepetition Liens that might arise from the Debtors' prepetition fabrication of equipment, repair, maintenance, and construction activities, the Debtors estimate that the Liens resulting therefrom could be approximately \$63 million<sup>6</sup> unless the Debtors are authorized to continue to pay the Contractors in the ordinary course of their businesses.

22. With respect to any payments that are made on account of prepetition obligations, in return for payment of the Contractor Claims in the ordinary course of business, the Debtors may require that the Contractors continue to provide services to the Debtors during the pendency of these chapter 11 cases on the most favorable terms that existed prior to the Petition Date. If any Contractor then accepts payment on account of a prepetition obligation of the Debtors and thereafter does not continue to provide services to the Debtors on the most favorable prepetition trade terms, the Debtors propose that any payment made be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, would be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Contractor Claim would be reinstated as a prepetition claim in the amount so recovered. The Debtors also seek authorization but not direction to obtain written verification, before issuing

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Liens in respect of their Contractor Claims, and to the extent that such Contractor Claims relate to goods scheduled for postpetition delivery to the Debtors, the Debtors submit that such Contractor Claims are covered by the relief sought in the Postpetition Delivery of Goods Motion.

<sup>6</sup> The Debtors estimate that this \$63 million would encompass \$57 million in tool builders' liens and \$6 million in other Contractors' liens.

payment to a Contractor, that such Contractor be required to continue to provide services to the Debtors during the pendency of these chapter 11 cases on the most favorable terms that existed prior to the Petition Date and otherwise comply with the terms of the order sought hereunder; provided, however, that the absence of such written verification would not limit the Debtors' rights sought hereunder. Nothing in this paragraph would preclude a Contractor from contesting such treatment by making a written request to the Debtors to schedule a hearing before this Court, which hearing the Debtors would set for the next regularly-scheduled omnibus hearing date occurring more than ten days after the date of such Contractor's request.

Applicable Authority

23. The Debtors, operating their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." Id.

24. Courts have noted that there are instances in which a debtor-in-possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." Id. at 497.

25. Without question, failure to pay the Contractors on a timely basis would have an immediate and detrimental impact on the Debtors' businesses. Contractors likely would seek to enforce Liens, which might then jeopardize the Debtors' ability to complete ongoing repair and maintenance projects. Moreover, failure to pay the Contractor Claims might cause

certain tool builders to retain tooling of the Debtors that is in the tool builders' possession, which would interfere with the Debtors' operations and prevent the Debtors from servicing certain of their customers. Accordingly, the Debtors believe that payment of the Contractors is necessary to the Debtors' reorganization efforts.

26. In addition, this Court may authorize the Debtors to pay the Contractor Claims under section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for doing so. See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); see also, Fulton State Bank v. Schipper, 933 F.2d 513, 515 (7th Cir. 1991); In re Global Crossing Ltd., 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003); In re Ionosphere Clubs, 98 B.R. 174 at 175 (Bankr. S.D.N.Y. 1989); In re Gulf States Steel, Inc. of Ala., 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). For the reasons discussed above, the Debtors have determined, in the exercise of their business judgment, that the failure to pay the Contractor Claims would have a material adverse impact on their operations and therefore is necessary to their restructuring efforts.

27. Another traditional source of authority for preplan payments of prepetition debts is the "doctrine of necessity" or "necessity of payment" rule first recognized by the Supreme Court more than 120 years ago in Miltenberger v. Logansport, Crawfordsville & Southwestern Railway, 106 U.S. 286 (1882). In Miltenberger, the Supreme Court acknowledged that the basic duty of a court in appointing an equity receiver is "to protect and preserve the trust funds in its hands," Id. at 161 (quoting Wallace v. Loomis, 97 U.S. 146, 162 (1877)). More importantly, the Court held, consistent with this duty: "[M]any circumstances may exist which may make it necessary and indispensable to the business. . . and the preservation of the property,

for the receiver to pay pre-existing debts . . . out of the earnings of the [debtor] . . . under the order of the court . . . ." 106 U.S. at 311.

28. This doctrine recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor. See, In re UNR Indus., Inc., 143 B.R. 506, 519-20 (Bankr. N.D. Ill. 1992), rev'd on other grounds, 173 B.R. 149 (N.D. Ill. 1994); see also In re Lehigh & New Eng. Ry., 657 F.2d 570, 581 (3d Cir. 1981) (payment of creditors' claims can be authorized under "necessity of payment" doctrine); In re C.A.F. Bindery, Inc., 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996) (payment of prepetition claims warranted when critical to debtor's reorganization). This doctrine is consistent with the paramount goal of chapter 11 – "facilitating the continued operation and rehabilitation of the debtor." Ionosphere Clubs, 98 B.R. at 176; see also Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) ("Let it [(a hotel)] once shut down, and it will lose much of its value. . . . Some priority [to the hotel's prepetition suppliers] may be essential to the preservation of the business . . . .").

29. The court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." Ionosphere Clubs, 98 B.R. at 175-176, 176-177 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992). For example, in In re Structurlite Plastics Corp., 86 B.R. 922,

932 (Bankr. S.D. Ohio 1988), the court embraced "the principle that a bankruptcy court may exercise its equity powers under [section] 105(a) to authorize payment of prepetition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor . . .'" Id. at 931 (quoting In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that "a per se rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." Structurlite, Id. at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

30. Permitting the Debtors to discharge Liens by paying the Contractor Claims, as necessary and appropriate, promotes the expeditious administration of these cases, to the benefit of the Debtors' estates, creditors, and all parties-in-interest, by eliminating the substantial time and expense incident to obtaining Court authority to assume each Agreement. Furthermore, because the Debtors would be making payments on account only of Contractor Claims with respect to which the Contractor would be entitled to one or more Liens, any such Contractor otherwise would be a secured creditor of the Debtors' estates. Thus, the payments contemplated herein will not diminish assets of the Debtors' estates to the detriment of unsecured creditors.

31. Relief similar to that requested herein has been granted in other large chapter 11 cases. See e.g., In re Tower Auto., Inc., Case No. 05-10578 (Bankr. S.D.N.Y. Feb. 3, 2005); In re Trans World Airlines, Inc., Case No. 01-0056 (Bankr. D. Del. Jan. 10, 2001) (order authorizing payment or honoring of certain prepetition claims of outside mechanics and repairmen of approximately \$19.1 million); In re Levitz Furniture Inc., et al., Case No. 97-1842 (Bankr. D. Del. Sept. 5, 1997); In re Montgomery Ward Holding Corp., Case No. 97-1409

(Bankr. D. Del. July 8, 1997); In re Serv. Merch. Co., Inc., Case No. 399-02649 (Bank. M.D. Tenn. Mar. 30, 1999).

32. Finally, the Debtors request that all applicable banks and other financial institutions be authorized and directed to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts or electronic transfers authorized by the Debtors to pay Contractor Claims, whether such checks were presented or transfers were made prior to, on, or after the Petition Date. The Debtors represent that such checks and transfers readily can be identified as relating directly to the authorized payment of a Contractor Claim. Accordingly, checks and transfers other than those relating to such authorized payments should not be honored inadvertently.

Notice

33. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to (a) the Office of the United States Trustee, (b) the Debtors' 50 largest unsecured creditors, (c) counsel for the agent under the Debtors' prepetition credit facility, and (d) counsel for the agent under the Debtors' proposed postpetition credit facility. In light of the nature of the relief requested, the Debtors submit that no other or further notice is necessary.

Memorandum Of Law

34. Because the legal points and authorities upon which this Motion relies are incorporated herein, the Debtors respectfully request that the requirement of the service and filing of a separate memorandum of law under Local Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

WHEREFORE, the Debtors respectfully request that this Court enter an order  
(a) authorizing but not directing the Debtors, in their sole discretion, to pay the Contractor  
Claims in the ordinary course of the Debtors' businesses, (b) authorizing and directing all  
applicable banks and other financial institutions to receive, process, honor, and pay any and all  
checks drawn on the Debtors' accounts to pay the Contractor Claims, whether such checks were  
presented prior to, on, or after the Petition Date, provided that sufficient funds are available in  
the applicable accounts to make such payments, and (c) granting the Debtors such other and  
further relief as is just.

Dated: New York, New York  
October 8, 2005

SKADDEN, ARPS, SLATE, MEAGHER  
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